

MEMORANDUM

TO: County Council

FROM: *MS* Michael Faden, Senior Legislative Attorney

SUBJECT: **Introduction:** Expedited Bill 22-13, Taxation – Fuel Energy Tax – Renewable Energy Sources

Expedited Bill 22-13, Taxation – Fuel Energy Tax – Renewable Energy Sources, sponsored by the Council President at the request of the County Executive, is scheduled to be introduced on July 9, 2013. A public hearing is tentatively scheduled for July 30 at 1:30 p.m., and a joint Government Operations and Fiscal Policy Committee/Transportation, Infrastructure, Energy, and Environment Committee worksession is tentatively scheduled for July 15 at 9:30 a.m.

Bill 22-13 would exempt from the County fuel-energy tax any energy produced and delivered in the County and generated from a renewable energy source. A renewable energy source is defined by reference to the definition of a “Tier 1 renewable source” in the state Public Utilities law (see ©10-11), which includes solar and wind power, biomass, and geothermal energy, among other sources.

The OMB fiscal impact statement estimated an annual revenue loss of \$108,500 in the near term, although this appears to be based only on energy generated by solar electric systems. This number could rise substantially as more homeowners and businesses install various forms of renewable energy sources.

This packet contains:

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Expedited Bill No. 22-13
Concerning: Taxation – Fuel Energy Tax
Revised: 7-1-13 Draft No. 1
Introduced: July 9, 2013
Expires: January 9, 2015
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Council President at the Request of the County Executive

AN EXPEDITED ACT to:

- (1) exempt energy that is generated from certain renewable energy sources from the fuel energy tax; and
- (2) generally amend County law regarding the fuel energy tax.

By amending

Montgomery County Code
Chapter 52, Taxation
Section 52-14

Boldface

Underlining

[Single boldface brackets]

Double underlining

[[Double boldface brackets]]

* * *

Heading or defined term.

Added to existing law by original bill.

Deleted from existing law by original bill.

Added by amendment.

Deleted from existing law or the bill by amendment.

Existing law unaffected by bill.

The County Council for Montgomery County, Maryland approves the following Act:

1 **Sec. 1. Section 52-14 is amended as follows:**

2 **52-14. Fuel-energy tax.**

3 (a) (1) A tax is levied and imposed on every person transmitting,
4 distributing, manufacturing, producing, or supplying electricity,
5 gas, steam, coal, fuel oil, or liquefied petroleum gas in the
6 County.

7 (2) The County Council must set the rates for various forms of fuel
8 and energy by a resolution adopted [according to the
9 requirements of] under Section 52-17(c). The Council may, from
10 time to time, revise, amend, increase, or decrease the rates,
11 including [establishing] setting different rates for fuel or energy
12 delivered for different categories of final consumption, such as
13 residential or agricultural use. [The rates] Each rate must be
14 based on a weight or other unit of measure regularly used [by
15 such persons] in the conduct of [their] business. The rate for each
16 form of fuel or energy should impose an equal or substantially
17 equal tax on the equivalent energy content of each form of fuel or
18 energy for a particular category of use.

19 (3) The tax does not apply to the transmission or distribution of
20 electricity, gas, steam, coal, fuel oil, or liquefied petroleum gas in
21 interstate commerce through the County if the tax would exceed
22 the taxing power of the County under the United States
23 Constitution. The tax does not apply to fuel or energy converted
24 to another form of energy that will be subject to a tax under this
25 Section. The tax must not be imposed at more than one point in
26 the transmission, distribution, manufacture, production, or supply

system. The rates of tax apply to the quantities measured at the point of delivery for final consumption in the County.

(4) The tax does not apply to energy that is generated from a renewable source in the County and delivered to or used by an end user in the County. Renewable source means a “Tier 1 renewable source” as defined in Section 7-701(l) of the Public Utilities Article of the Maryland Code or any successor provision.

* * *

Sec. 2. Expedited effective date; applicability.

(a) The Council declares that this legislation is necessary for the immediate protection of the public interest. This Act takes effect on the date when it becomes law.

(b) This Act applies to energy delivered before or after this Act takes effect.

Approved:

Nancy Navarro, President, County Council Date

Approved:

Isiah Leggett, County Executive Date

This is a correct copy of Council action.

Linda M. Lauer, Clerk of the Council Date

LEGISLATIVE REQUEST REPORT

Expedited Bill 22-13

Taxation – Fuel Energy Tax – Renewable Energy Sources

DESCRIPTION:	Bill 22-13 will create an exemption from the fuel energy tax for energy that is generated from a renewable energy source.
PROBLEM:	The current version of the fuel energy tax imposes the tax on all energy that is generated, manufactured or supplied from a renewable energy source.
GOALS AND OBJECTIVES:	To exempt energy from the fuel energy tax that is generated from a renewable energy source.
COORDINATION:	Department of Environmental Protection and Department of Finance.
FISCAL IMPACT:	To be requested.
ECONOMIC IMPACT:	To be requested.
EVALUATION:	To be requested.
EXPERIENCE ELSEWHERE:	To be requested.
SOURCE OF INFORMATION:	Bob Hoyt, Department of Environmental Protection
APPLICATION WITHIN MUNICIPALITIES:	Applicable.
PENALTIES:	None.



OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

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MEMORANDUM

June 21, 2013


Isiah Leggett
County Executive

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TO: Nancy Navarro, Council President

FROM: Isiah Leggett, County Executive 

RE: Proposed Legislation – Fuel Energy Tax Exemption for Renewable Energy Sources

I am transmitting for Council introduction a bill that creates an exemption from the County's fuel energy tax for energy that is generated from a renewable energy source provided the energy is generated within the boundaries of the County and is used by an end user in the County. I am also attaching the Legislation Request Report and Fiscal and Economic Impact Statements for the bill.

The bill will create an exemption from the fuel energy tax for energy that is created by a renewable energy source. The renewable energy sources are defined in Section 7-701(l) of the Public Utilities Article, which include among other things, electricity that is created by solar energy.

I would appreciate your consideration of this bill and if you have any questions or need additional information, do not hesitate to contact Bob Hoyt, Director, Department of Environmental Protection, at 240-777-7781.

Attachments: (4)

c: Joseph Beach, Director, Department of Finance
Marc Hansen, County Attorney
Bob Hoyt, Director, Department of Environmental Protection
Jennifer Hughes, Director, Department of Management and Budget

Fiscal Impact Statement
Council Bill xx-13, Taxation – Fuel Energy Tax

1. Legislation Summary.

The legislation exempts from the fuel energy tax energy that is generated from a renewable energy source. The legislation would exempt solar electricity from the fuel tax.

2. An estimate of changes in County revenues and expenditures regardless of whether the revenues or expenditures are assumed in the recommended or approved budget.

Includes source of information, assumptions, and methodologies used.

The Bill does not have an expenditure impact. Currently, the County does not collect the fuel energy tax on energy generated by solar electricity systems. The County Attorney, however, has determined that electricity generated by solar systems is subject to the tax. Based on currently available industry data, the best estimate is that \$108,500 in fuel energy tax revenue would be exempt under this Bill. Since the solar industry continues to expand, the tax exemption could increase over time.

3. Revenue and expenditure estimates covering at least the next 6 fiscal years.

Revenues for the next six fiscal years are difficult to project, given that solar energy generation is a relatively small segment of energy generation in the County. Assuming annual growth of 10 percent, uncollected fuel energy tax revenue is estimated to be \$837,170 over six years.

4. An actuarial analysis through the entire amortization period for each bill that would affect retiree pension or group insurance costs.

This legislation does not affect retiree pension or group insurance costs.

5. Later actions that may affect future revenue and expenditures if the bill authorizes future spending.

The legislation does not authorize future spending.

6. An estimate of the staff time needed to implement the bill.

There is no additional staff time needed to implement the bill.

7. An explanation of how the addition of new staff responsibilities would affect other duties.

The legislation does not establish new staff responsibilities.

8. An estimate of costs when an additional appropriation is needed.

Not applicable.

9. A description of any variable that could affect revenue and cost estimates.

A key variable would be the number of solar electricity systems installed in the County. The estimate is based on Maryland Energy Administration data indicating 6500 kW of solar capacity in 2012. Growth in solar electricity capacity will result in increased fuel energy tax exemptions.

10. Ranges of revenue or expenditures that are uncertain or difficult to project.

See item number 9 above.

11. If a bill is likely to have no fiscal impact, why that is the case.

See numbers 2 and 3 above.

12. Other fiscal impacts or comments.

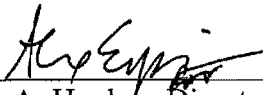
Not applicable.

13. The following contributed to and concurred with this analysis:

Erika Lopez-Finn, Office of Management and Budget;

Robert Hagedoorn, Department of Finance;

David Platt, Department of Finance



Jennifer A. Hughes, Director
Office of Management and Budget

5/30/2013

Date

Economic Impact Statement
Bill xx-13, Fuel Energy Tax

Background:

This legislation would create an exemption from the fuel energy tax for energy that is generated from a renewable energy sources located within the County, primarily solar photovoltaic panels, and generally amend County law regarding the fuel energy tax

1. The sources of information, assumptions, and methodologies used.

- Maryland Energy Administration (MEA) solar grant database and Montgomery County Department of Environmental Protection (DEP) data on large systems being installed.
- DEP estimates that as of 2013 current installed solar panel capacity is 6,500 kilowatts (kW), of which approximately 5,500 kW is residential and 1,000 kW is commercial.. A precise forecast of additional installed capacity is difficult; although it is expected to increase through 2016, when current federal incentives are due to expire. Other sources of clean energy subject to the exemption are minor compared to solar.

2. A description of any variable that could affect the economic impact estimates.

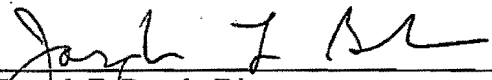
- The amount of additional capacity from the installation of solar panels.
- The price of electricity from energy distributors to residential and commercial customers.
- The County's tax rate for electricity usage by residential and commercial customers.

3. The Bill's positive or negative effect, if any on employment, spending, saving, investment, incomes, and property values in the County.

- The legislation may stimulate investment for solar panels by residential and commercial users because it clarifies the imposition of the County's energy tax on the generation of electricity from solar panels. The Bill exempts the generation of electricity from solar panels from the County's energy tax. That exemption would decrease energy expenses and increase incomes for both residential and commercial users of solar panels all other things being equal.
- With the exemption from the County's energy tax, the demand for solar panels could increase all other things being equal. Such an increase in demand would benefit local supply and construction companies and increase business income.

Economic Impact Statement
Bill xx-13, Fuel Energy Tax

- While the stimulation in investment for solar panels may have an economic impact attributed to the exemption, the total impact on the County's economy through employment, spending, investment, incomes, and property values may be modest.
4. If a Bill is likely to have no economic impact, why is that the case?
- The Bill could have a modest positive economic impact.
5. The following contributed to and concurred with this analysis: David Platt and Mike Coveyou, Finance



Joseph F. Beach, Director
Department of Finance

5/30/13
Date

yard materials, grain, legumes, sugar, and other crop by-products or residues; or

4. gas produced from the anaerobic decomposition of animal waste or poultry waste; or

(ii) a plant that is cultivated exclusively for purposes of being used at a Tier 1 renewable source or a Tier 2 renewable source to produce electricity.

(2) "Qualifying biomass" includes biomass listed in paragraph (1) of this subsection that is used for co-firing, subject to § 7-704(d) of this subtitle.

(3) "Qualifying biomass" does not include:

(i) unsegregated solid waste or postconsumer wastepaper; or

(ii) an invasive exotic plant species.

(i) *Renewable energy credit*. — "Renewable energy credit" or "credit" means a credit equal to the generation attributes of 1 megawatt-hour of electricity that is derived from a Tier 1 renewable source or a Tier 2 renewable source that is located:

(1) in the PJM region; or

(2) outside the area described in item (1) of this subsection but in a control area that is adjacent to the PJM region, if the electricity is delivered into the PJM region.

(j) *Renewable energy portfolio standard*. — "Renewable energy portfolio standard" or "standard" means the percentage of electricity sales at retail in the State that is to be derived from Tier 1 renewable sources and Tier 2 renewable sources in accordance with § 7-703(b) of this subtitle.

(k) *Renewable on-site generator*. — "Renewable on-site generator" means a person who generates electricity on site from a Tier 1 renewable source or a Tier 2 renewable source for the person's own use.

(k-1) *Solar water heating system*. — (1) "Solar water heating system" means a system that:

(i) is comprised of glazed liquid-type flat-plate or tubular solar collectors as defined and certified to the OG-100 standard of the Solar Ratings and Certification Corporation;

(ii) generates energy using solar radiation for the purpose of heating water; and

(iii) does not feed electricity back to the electric grid.

(2) "Solar water heating system" does not include a system that generates energy using solar radiation for the sole purpose of heating a hot tub or swimming pool.

(l) *Tier 1 renewable source*. — "Tier 1 renewable source" means one or more of the following types of energy sources:

(1) solar energy, including energy from photovoltaic technologies and solar water heating systems;

(2) wind;

(3) qualifying biomass;

(4) methane from the anaerobic decomposition of organic materials in a landfill or wastewater treatment plant;

(5) geothermal, including energy generated through geothermal exchange from or thermal energy avoided by, groundwater or a shallow ground source;

(6) ocean, including energy from waves, tides, currents, and thermal differences;

(7) a fuel cell that produces electricity from a Tier 1 renewable source under item (3) or (4) of this subsection;

(8) a small hydroelectric power plant of less than 30 megawatts in capacity that is licensed or exempt from licensing by the Federal Energy Regulatory Commission;

(9) poultry litter-to-energy;

(10) waste-to-energy; and

(11) refuse-derived fuel.

(m) *Tier 2 renewable source*. — “Tier 2 renewable source” means hydroelectric power other than pump storage generation. (2004, ch. 487, § 1; ch. 488, § 1; 2005, ch. 266; 2007, chs. 119, 120; 2008, ch. 125, § 2; ch. 126, § 2; chs. 127, 128, 135, 136; 2011, chs. 65, 407, 408, 519; 2012, chs. 556, 557.)

Effect of amendments.

Section 2, chs. 125 and 126, Acts 2008, effective January 1, 2011, made identical changes. Each reenacted (a) without change; and deleted “or in a state that is adjacent to the PJM region” at the end of (i)(1).

Chapter 65, Acts 2011, enacted April 12, 2011, and effective from date of enactment, substituted “subsection” for “section” in (h)(2).

Chapter 519, Acts 2011, effective October 1, 2011, added (l)(10) and (l)(11); rewrote (m); and made related changes.

Chapters 407 and 408, Acts 2011, effective January 1, 2012, made identical changes. Each reenacted (a) without change; added (k-1); and in (l)(1) added “energy, including energy from photovoltaic technologies and solar water heating systems.”

Chapters 556 and 557, Acts 2012, effective October 1, 2012, made identical changes. Each reenacted (a) without change; added (c-1); and in (l)(5) added “including energy generated through geothermal exchange from or thermal energy avoided by, groundwater or a shallow ground source.”

Editor's note.

Section 4, ch. 65, Acts 2011, provides that “the provisions of this Act are intended solely to correct technical errors in the law and there is no intent to revive or otherwise affect law that is the subject of other acts, whether those acts were signed by the Governor prior to or after the signing of this Act.”

Section 2, chs. 407 and 408, Acts 2011, provides that “this Act shall apply only to solar

water heating systems that are commissioned on or after June 1, 2011.”

Section 3, chs. 407 and 408, Acts 2011, provides that the acts shall take effect January 1, 2012.

Chapters 407, 408, and 519, Acts 2011, all amended (l). None of the chapters referred to the others, and effect has been given to all, as they amended different portions of (l).

Section 2, chs. 556 and 557, Acts 2012, provides that “this Act shall apply only to geothermal heating and cooling systems that are commissioned on or after January 1, 2013.”

Bill review letter. — Chapters 556 and 557, Acts 2012 (S.B. 652 and H.B. 1186), effective October 1, 2012, was approved for constitutionality and legal sufficiency, even though a severable portion may violate the Commerce Clause of the United States Constitution. The bills add geothermal heating and cooling pumps that must be connected to the distribution grid serving Maryland as RPS resources that qualify for REC credits. A Commerce Clause issue is raised because the bills appear to prohibit certain types of out-of-state geothermal heating and cooling systems that are not connected to the distribution grid serving Maryland from qualifying for REC credits. Even though the size of the impact of this limitation upon interstate commerce could be minimal, it is possible a court would find that the bills, in part, violate the Commerce Clause. (Letter of Attorney General dated May 10, 2012.)

University of Baltimore Law Forum. — For an article, “Protecting Maryland’s Environment: A Holistic Solution,” see 40 U. Balt. L. F. 205 (2010).